

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

COMPETITIVE PRODUCT PRICES  
PRIORITY MAIL  
PRIORITY MAIL CONTRACT 368

Docket No. MC2018-5

COMPETITIVE PRODUCT PRICES  
PRIORITY MAIL CONTRACT 368 (MC2018-5)  
NEGOTIATED SERVICE AGREEMENT

Docket No. CP2018-7

**REQUEST OF THE UNITED STATES POSTAL SERVICE TO ADD  
PRIORITY MAIL CONTRACT 368 TO COMPETITIVE PRODUCT LIST  
AND NOTICE OF FILING (UNDER SEAL) OF UNREDACTED GOVERNORS'  
DECISION, CONTRACT, AND SUPPORTING DATA  
(October 6, 2017)**

In accordance with 39 U.S.C. § 3642 and 39 C.F.R. § 3020.30 et seq., the United States Postal Service hereby requests that Priority Mail Contract 368 be added to the competitive product list within the Mail Classification Schedule.<sup>1</sup> This is a competitive product not of general applicability within the meaning of 39 U.S.C. § 3632(b)(3).<sup>2</sup> Attachment A is a redacted version of the Governors' Decision and accompanying analysis.<sup>3</sup> An explanation and justification is provided in the Governors' Decision and analysis, which are being filed in unredacted version under seal.<sup>4</sup> Attachment B is a redacted version of the contract. Attachment C shows the requested changes in the Mail Classification product list with the addition underlined.<sup>5</sup> Attachment D provides a statement of supporting justification for this request, as specified in 39 C.F.R.

<sup>1</sup> 39 C.F.R. § 3020.31(a), (c).

<sup>2</sup> *Id.* § 3020.31(d).

<sup>3</sup> *Id.* § 3020.31(b).

<sup>4</sup> *Id.* § 3015.5(b)

<sup>5</sup> *Id.* § 3020.31(f).

§ 3020.32.<sup>6</sup> Attachment E is the certification of compliance with 39 U.S.C. § (a)(1) and (3).<sup>7</sup> Attachment F provides the Application for Nonpublic Treatment of the materials filed under seal.<sup>8</sup> Those materials are the unredacted contract and the required cost and revenue data.<sup>9</sup>

As explained in the supporting justification, the Postal Service believes that it is appropriate to add this contract to the list of competitive products. The Commission should therefore approve this request as set forth in its rules. As required by 39 U.S.C. § 3642(d)(1), this Request is being published in the Federal Register.

Respectfully submitted,

UNITED STATES POSTAL SERVICE  
By its attorney:

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October 6, 2017

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<sup>6</sup> *Id.* § 3020.31(e).

<sup>7</sup> *Id.* § 3015.5(c)(2).

<sup>8</sup> *Id.* § 3007.21.

<sup>9</sup> *Id.* § 3015.5(c)(1).

**ATTACHMENT A TO REQUEST  
REDACTED GOVERNORS' DECISION**

**DECISION OF THE GOVERNORS OF THE UNITED STATES POSTAL SERVICE ON THE  
ESTABLISHMENT OF PRICES AND CLASSIFICATIONS FOR DOMESTIC COMPETITIVE  
AGREEMENTS, OUTBOUND INTERNATIONAL COMPETITIVE AGREEMENTS, INBOUND  
INTERNATIONAL COMPETITIVE AGREEMENTS, AND OTHER NON-PUBLISHED  
COMPETITIVE RATES (GOVERNORS' DECISION NO. 11-6)**

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March 22, 2011

**STATEMENT OF EXPLANATION AND JUSTIFICATION**

Pursuant to our authority under section 3632 of title 39, as amended by the Postal Accountability and Enhancement Act of 2006 ("PAEA"), we establish new prices not of general applicability for certain of the Postal Service's competitive service offerings, and such changes in classification as are necessary to implement the new prices.

This decision establishes prices for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates. Domestic Competitive Agreements consist of negotiated service agreements with Postal Service customers for domestic services that are categorized as competitive in accordance with 39 U.S.C. § 3642(b)(1)-(2). Outbound International Competitive Agreements consist of negotiated service agreements with Postal Service customers for outbound international services that are categorized as competitive in accordance with 39 U.S.C. § 3642(b)(1)-(2). Inbound International Competitive Agreements consist of negotiated service agreements with foreign postal operators or other entities for inbound international services that are categorized as competitive in accordance with 39 U.S.C. § 3642(b)(1)-(2). Other Non-Published Competitive Rates consist of rates not of general applicability that are not embodied in contractual instruments, but nonetheless arise from other sources, such as the Universal Postal Convention.

With respect to any product within the above categories, management is hereby authorized to prepare any necessary product description, including text for inclusion in the Mail Classification Schedule, and to present such product description to the Postal Regulatory Commission.

The Postal Accountability and Enhancement Act (PAEA) requires that prices for competitive products must cover each product's attributable costs, not result in subsidization by market dominant products, and enable all competitive products to contribute an appropriate share to the Postal Service's institutional costs. For agreements subject to this Decision, there are hereby established all prices that will cover [REDACTED] [REDACTED] costs for the relevant product and that conform in all other respects to 39 U.S.C. §§ 3632-3633 and 39 C.F.R. §§ 3015.5 and 3015.7. As discussed in the accompanying management analysis, the Chief Financial Officer (or his delegee(s)) shall certify that all cost inputs have been correctly identified for prices subject to this Decision and that all prices subject to this Decision conform to this Decision and to the requirements of the PAEA.

No agreement, grouping of functionally equivalent agreements, or other classification authorized pursuant to this Decision may go into effect unless it is submitted to the Postal Regulatory Commission with a notice that complies with 39 U.S.C. § 3632(b)(3). On a quarterly basis, management shall furnish the Governors with a report on all non-published rate and classification initiatives. Not less than once each year, the Governors shall review the basis for this Decision and make such further determination as they may deem necessary. This Decision does not affect postal management's obligation to furnish to the Board of Governors information regarding any significant, new program, policy, major modification, or initiative, or any other matter under 39 C.F.R. § 3.7(d), including where such a matter also falls within the scope of this Decision.

This Decision does not supersede or otherwise modify Governors' Decision Nos. 08-5, 08-6, 08-7, 08-8, 08-10, 08-20, 08-24, 09-5, 09-6, 09-7, 09-14, 09-15, 09-16, 10-1, 10-2, 10-3, 10-6, and 10-7, nor does it affect the validity of prices and classifications established under those Decisions. Management may also continue to present to the Postal Regulatory Commission for its review, as appropriate, rate and classification changes to succeed the minimum and maximum non-published rates in Decision Nos. 10-2 and 10-6.

#### ORDER

In accordance with the foregoing Decision of the Governors, the prices set forth herein for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates and the changes in classification necessary to implement those prices, are hereby approved and ordered into effect. An agreement is authorized under this Decision only if the prices fall within this Decision and the certification process specified herein is followed. Prices and classification changes established pursuant to this Decision will take effect after filing with and completion of review by the Postal Regulatory Commission.

By The Governors:



Louis J. Giuliano  
Chairman

## **Attachment A**

### **Management Analysis of Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates**

This analysis concerns the inbound competitive prices and classifications in the Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates (collectively, "competitive instruments"). Competitive instruments are often negotiated with customers and foreign postal operators for better cost coverage, higher overall contribution, and improved service with respect to postal services classified as competitive. They may also arise from other sources, such as the Universal Postal Convention.

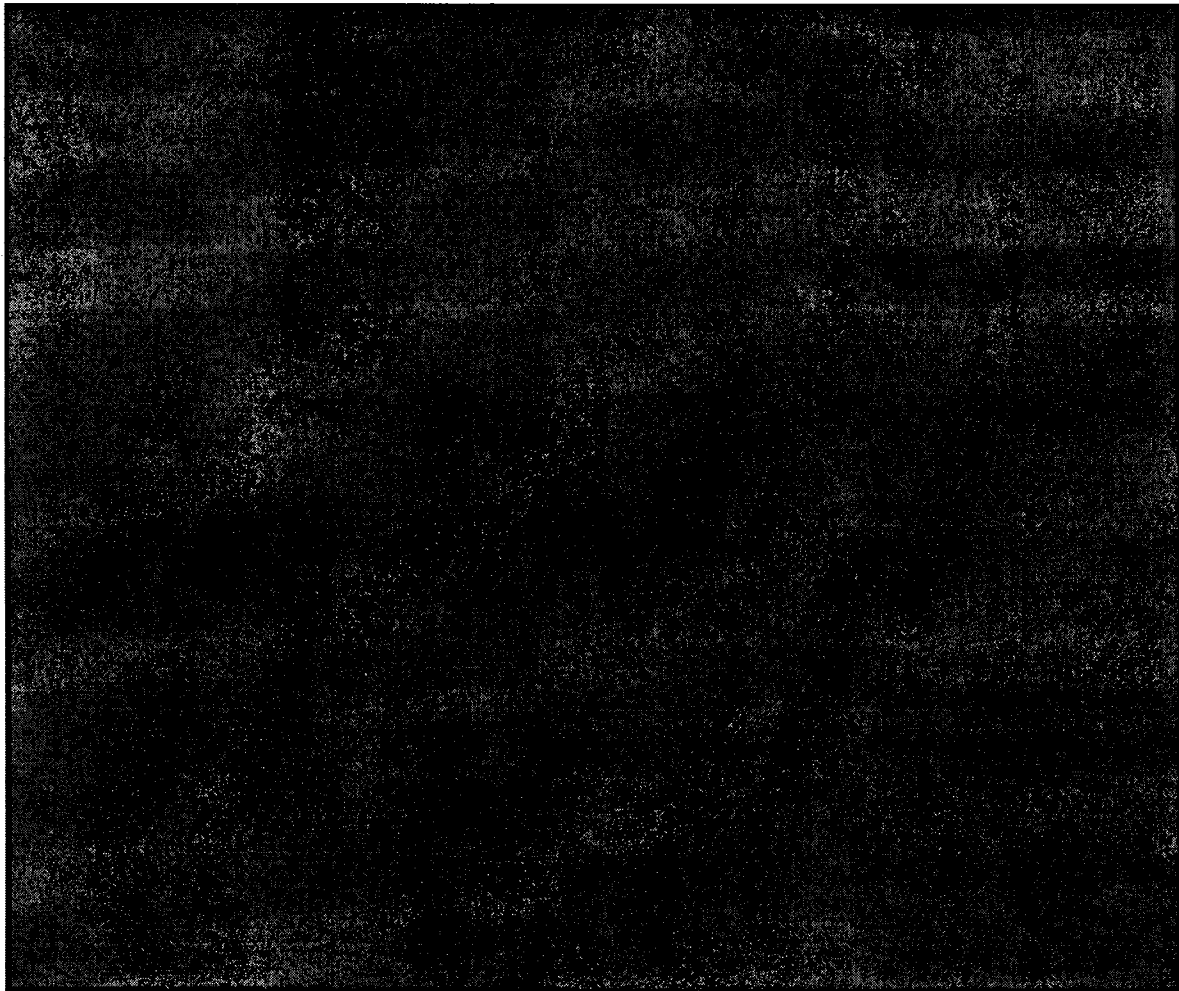
The cost coverage for each competitive agreement or grouping of functionally equivalent instruments (collectively, each "product") will be [REDACTED]

The cost coverage for a product equals [REDACTED]

[REDACTED]

Each competitive instrument may have multiple price categories and negotiated components. Examples of such categories or components would be Priority Mail, Express Mail, Parcel Return Service, Priority Mail International, Express Mail International, International Priority Airmail, International Surface Air Lift, Inbound Air Parcel Post, Inbound Surface Parcel Post, Inbound Direct Entry, and Inbound International Expedited Services. These or other categories may include other services that the relevant customer or foreign postal operator offers to its customers under differing terms, but that nevertheless are processed and delivered in the same manner within the United States Postal Service's network. Such instruments may also establish negotiated rates for services ancillary to such items and for customized competitive services developed for application solely in the context of the agreement.

[REDACTED]

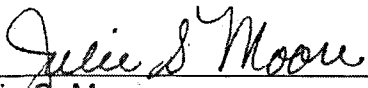


[REDACTED] Prices established by these formulas should not interfere with competitive products' ability as a whole to comply with 39 U.S.C. § 3633(a)(3), which, as implemented by (39 C.F.R. § 3015.7(c)) requires competitive products to contribute a minimum of 5.5 percent to the Postal Service's total institutional costs. Accordingly, no issue of subsidization of competitive products by market dominant products should arise (39 U.S.C. § 3633(a)(1)).



**CERTIFICATION OF GOVERNORS' VOTE  
IN THE  
GOVERNORS' DECISION NO. 11-6**

I hereby certify that the Governors voted on adopting Governors' Decision No. 11-6, and that, consistent with 39 USC 3632(a), a majority of the Governors then holding office concurred in the Decision.

  
\_\_\_\_\_  
Julie S. Moore  
Secretary of the Board of Governors

Date: 3/22/2011

**ATTACHMENT B TO REQUEST  
REDACTED SHIPPING SERVICES CONTRACT**

**SHIPPING SERVICES CONTRACT**  
**BETWEEN**  
**THE UNITED STATES POSTAL SERVICE**  
**AND**  
[REDACTED]  
**REGARDING**  
**PRIORITY MAIL SERVICE**

This contract for shipping services is made by and between [REDACTED] a corporation organized and existing under the laws of [REDACTED] with its principal office at [REDACTED] [REDACTED] ("Customer"), and the United States Postal Service ("Postal Service"), an independent establishment of the Executive Branch of the United States Government established by the Postal Reorganization Act, Public Law 91-375, Title 39 United States Code, as amended by the Postal Accountability and Enhancement Act of 2006 ("PAEA"), Public Law 109-435, with its principal office at 475 L'Enfant Plaza, SW, Washington, DC 20260. The Postal Service and Customer are referred to herein collectively as the "Parties" and each as a "Party".

WHEREAS, it is the intention of the Parties to enter into a Shipping Services Contract ("SSC" or "Contract") that will benefit the Postal Service, the postal system as a whole, and Customer, and that will comply with the requirements of Title 39 United States Code, as amended by the PRA and as further amended by the PAEA.

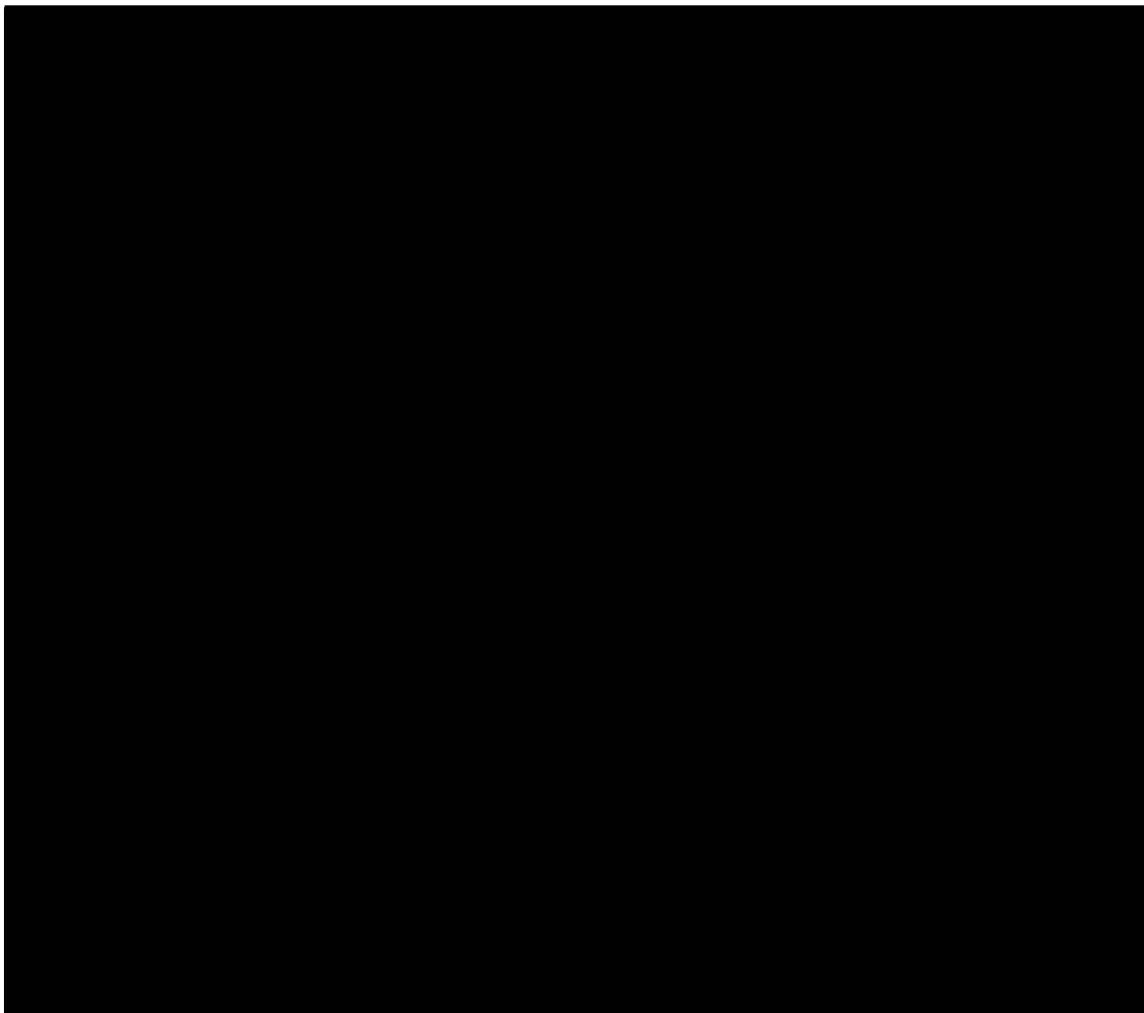
NOW, THEREFORE, in consideration of the mutual covenants herein and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**I. Terms**

The following terms apply as of the effective date, as defined below:

- A. Except to the extent different terms or prices are specified in this Contract, applicable provisions of the Domestic Mail Manual (as may be regularly updated by the Postal Service and posted at [http://pe.usps.com/text/dmm300/dmm300\\_landing.htm](http://pe.usps.com/text/dmm300/dmm300_landing.htm)) and of other postal laws and standards apply to mail tendered under this Contract.
- B. This Contract applies to Customer's trays of letters, flats, and parcels, tendered to the Postal Service as Priority Mail for same day delivery to/from Customer's facilities listed in Attachment A, and in accordance with Section I.D below. Each tray shall weigh up to [REDACTED] ("Contract Packages").
- C. Customer will utilize USPS approved postage payment methods for its Contract Packages.

- D. The terms and prices contained herein will take effect on the Effective Date as defined in Section III below:



5. Customer shall receive the following prices for all Contract Packages:

- i. [REDACTED] per Pickup Event for Outbound Contract Packages
- ii. [REDACTED] per Delivery Event for Inbound Contract Packages

## **II. Annual Adjustment**

- A. For subsequent years of this Contract, beginning on the first anniversary of this Contract's Effective Date and on each anniversary thereafter, the customized prices in this Contract in Section I.D above will be the previous year's prices plus the most recent (as of the anniversary date) average percentage increase in prices of general applicability, as calculated by the Postal Service, for Priority Mail Commercial Base.
- B. Customized prices for the subsequent years will be calculated by the Postal Service and rounded up to the nearest whole cent.

### **III. Regulatory Review and Effective Date**

This Contract is subject to approval by Postal Service senior management and/or the Governors of the Postal Service as well as by the Postal Regulatory Commission (the "Commission"). In accordance with Title 39 and the Commission's Rules of Practice and Procedure, the Postal Service will make required filings with the Commission. The effective date of this contract shall be forty-five (45) calendar days (or as otherwise mutually agreed to in writing between the parties) after the Commission issues all necessary regulatory approval. For the purposes of this SSC, business days are defined as Monday through Friday, excluding federal holidays and days on which the Postal Service Headquarters is administratively closed.

### **IV. Expiration Date and Termination**

This Contract shall expire three (3) years from the effective date, unless (1) terminated by either Party with ninety (90) calendar days' notice to the other Party in writing; (2) renewed by mutual agreement in writing (3) superseded by a subsequent contract between the Parties; (4) ordered by the Commission or a court; or (5) otherwise required to comply with subsequently enacted legislation.

If, at the conclusion of this Contract term, both Parties agree that preparation of a successor SSC is active, the SSC will be extended for up to two (2) ninety (90) calendar day periods with official notification to the Commission at least seven (7) calendar days prior to the contract's expiration date. Upon both Parties agreement of the extension, the escalation clause will be implemented in Section II, throughout the extension period.

### **V. Appeals**

Customer may appeal a Postal Service decision regarding the calculation of prices, the amount of postage paid, or other implementation or operational issues under this Contract including but not limited to any payment made pursuant to Section I above, by submitting a written appeal within thirty (30) calendar days of receipt of notification of the determination giving rise to the appeal to: Manager, Pricing and Classification Service Center, 90 Church St. Ste. 3100, New York, NY 10007-2951 ((212) 330-5300 / Fax: (212) 330-5320). The decision of the PCSC Manager will be administratively final. Any decision that is not appealed to the Manager, PCSC, within the thirty (30) calendar day time period as prescribed becomes the final Postal Service decision. This appeal process relates only to the issues identified above that arise as a result of the implementation of this Contract.

### **VI. Confidentiality**

Neither Party shall make public the terms of this Contract, except to the extent required by law. The Postal Service shall request that the Commission, in executing its functions under the Act, not disclose Customer's identity, the terms of this contract, or supporting data, in accordance with the Commission's rules and practices.



A. Each Party acknowledges that certain identified confidential information may be disclosed to the other Party during the Term of the Contract ("Confidential Information"). The Party providing Confidential Information (the "Disclosing Party") shall identify the confidential information to which this Section V applies and no obligations shall arise with respect to information not in writing and appropriately marked as "Confidential Information". Verbal disclosure of Confidential Information shall be reduced to writing and appropriately identified within ten (10) business days after disclosure. All such identified information revealed to the party being furnished Confidential Information (the "Receiving Party") during any exchange of information shall be treated as Confidential Information and may not be released to third parties or used outside of the intended purposes, except to the extent Sections VI.C, VI.D and VI.E are applicable, unless authorized in writing by an authorized representative of the Disclosing Party.

B. Each Party agrees that it will take reasonable steps, at least substantially equivalent to the steps it takes to protect its own proprietary information, during the Term of the Contract, and for a period of one (1) year following expiration or termination of the Contract, to prevent the duplication or disclosure of Confidential Information of the other Party, other than by or to its employees or agents who must have access to such Confidential Information to perform such Party's obligations hereunder, who have each agreed to confidentiality restrictions no less protective than this Section VI.

C. Nothing in this Contract shall prevent a Party from disclosing information to the extent that such Party is legally compelled to do so by any governmental or judicial entity pursuant to proceedings over which such entity has jurisdiction; provided, however, that such Party shall (a) notify the other Party in writing of the agency's order or request to disclose such information, providing, to the extent practicable, at least ten (10) business days' notice where practicable prior to disclosure, (b) if disclosure of this Contract is requested, redact mutually agreed-upon portions of this Contract under applicable laws, rules and regulations, and (c) otherwise cooperate with the other Party in protecting against any such disclosure and/or obtaining with a protective order narrowing the scope of the compelled disclosure and protecting its confidentiality.

D. The Receiving Party may release Confidential Information requested by any federal, state, or local governmental body in the proper exercise of its oversight or investigatory jurisdiction. In addition, the parties shall be governed by USPS regulations regarding prerelease notice of business information at 39 CFR 265.8 (or a successor provision dealing with similar matters). Nothing in this Section VI will be construed as a representation or agreement to restrict reassignment of either Party's employees, or in any manner to affect or limit either Party's present or future business activities of any nature, including business activities which could be competitive with the disclosing Party. Nothing herein shall prohibit the disclosing Party from pursuing a transaction similar to the one contemplated herein independently or with any other third party or parties.

E. The Parties agree that this Contract shall be subject to the Freedom of Information Act, 5 U.S.C. §552 (as amended), the Privacy Act, 5 U.S.C. §552a (as amended), the USPS implementing regulations, 39 C.F.R. Parts 266-267, and any other privacy or confidentiality

considerations required by law, including but not limited to 39 U.S.C. §412 (and any successor provisions dealing with similar matters).

F. Customer will not make any public statements or any filings with the United States Securities and Exchange Commission (the "SEC") or any securities exchange disclosing or otherwise referencing the existence or any terms of this Contract, except as required by federal securities law in accordance with this Section VI. If Customer determines in its reasonable judgment that applicable federal securities law requires Customer to make any public disclosures or filings with the SEC or a securities exchange disclosing or otherwise referencing the existence or any terms of this Contract, Customer will consult with Postal Service prior to making such disclosure or filing and provide Postal Service with a reasonable opportunity to review and comment on such disclosure or filing prior to making such disclosure or filing. Customer will cooperate with Postal Service regarding any such disclosures or filings and use.

## **VII. Assignment**

Neither Party may, or shall have the power to, assign its rights under this Contract or, delegate its obligations hereunder, without the prior consent of the other; such consent is not to be unreasonably withheld. In addition, in the event that Customer is merged with or into or acquires another entity, pricing under this contract following such merger or acquisition shall apply only to mail sent by the entity existing prior to the merger or acquisition. Following any such merger or acquisition, the Parties may negotiate in good faith to extend, modify or enter into a new contract applicable to the merged or acquired entity.

## **VIII. Entire Agreement; Amendments; Waiver**

This Contract shall not be amended except expressly, in writing, by authorized representatives of the Parties. This Contract constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties. This Contract shall not be amended except expressly, in writing, by authorized representatives of the Parties. No supplement, modification or waiver of this Contract shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Contract shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

**IX. Compliance and Other Issues.** Customer will make necessary records and data available to the Postal Service to facilitate and monitor compliance with this Contract.



## **X. Representations, Warranties and Limitations**

A. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS SECTION X, THE SERVICES PROVIDED UNDER THIS CONTRACT ARE PROVIDED "AS IS." EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS SECTION X NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES UNDER THIS CONTRACT, AND EACH PARTY DISCLAIMS ANY AND ALL OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.

B. Each Party represents that it has the requisite corporate authority to enter into this Contract and to grant the rights granted herein, and that there are no outstanding rights, agreements, grants, encumbrances, obligations or restrictions that would prevent such Party from performing under the terms of this Contract.

C. Customer represents and warrants all of the following:

1. Customer is a company duly organized, validly existing and in good standing under the laws of the state and/or country of its principal office, with full power and authority to execute and deliver this Contract and to perform its obligations, and maintains its principal executive office at the address set forth herein. The execution, delivery and performance of this Contract have been duly authorized by all necessary actions of Customer and this Contract constitutes a valid and binding obligation of Customer enforceable against Customer in accordance with its terms, and the consent of no other entity or person is required for Customer to fully perform all of its obligations or services herein.

2. Customer shall comply with and act in accordance with: (A) any and all applicable laws and other legal obligations including, without limitation, local, state and federal directives, rules, assessments, regulations, filing requirements, ordinances, statutes, codes, judgments and civil or common law; (B) conventions and treaties to which the United States or any legal subdivision thereof is a party (individually and collectively "Law" or "Laws"); and (C) the requirements of this Contract. This Section X specifically requires Customer to comply with the CAN-SPAM Act and all other federal, state, and local laws regarding email promotions. In addition, Customer shall use commercially reasonable efforts to comply with all manufacturing, distribution, retail and marketing policies and strategies issued by USPS and provided to Customer From time to time.

3. The making of this Contract by Customer does not violate any agreement, right or obligation between Customer and any other person, entity, firm or corporation, and the permission and/or agreement of no other person, entity, firm or corporation is required for Customer to execute this Contract or perform the obligations herein; and neither Customer's execution and delivery of this Contract nor Customer's performance of any or all of the terms, obligations and services herein shall breach, be in conflict with or



constitute a default under any agreement or commitment to which Customer is a party or violate any Law applicable to Customer.

4. To the best of Customer's knowledge, there is no pending or threatened litigation which may affect the legality, validity or enforceability of this Contract or any of the transactions contemplated herein or Customer's ability to fully perform its obligations herein.

5. None of the representations or warranties made by Customer in this Contract as of the date hereof and none of the statements contained in any agreement or other document or report furnished by or on behalf of Customer to USPS in connection with this Contract contain any untrue statement of a material fact or omit any material fact necessary to make such statements accurate in light of the circumstances under which they were made.

D. USPS represents and warrants all of the following:

1. It owns or controls the rights granted herein.

2. It is an independent establishment of the executive branch of the United States government duly organized, validly existing and in good standing, with full power and authority to execute and deliver this Contract and to perform its obligations, and maintains its principal executive office at the address set forth hereinabove. The execution, delivery and performance of this Contract have been duly authorized by all necessary actions of USPS and this Contract constitutes a valid and binding obligation of USPS and the consent of no other entity or person is required for USPS to execute this Contract or fully perform all of its obligations or services herein.

3. The making of this Contract by USPS does not violate any agreement, right or obligation between USPS and any other person, entity, firm or corporation, and neither USPS's execution and delivery of this Contract nor USPS's performance of any or all of the terms, obligations and services herein shall knowingly breach, be in conflict with or constitute a default under any agreement or commitment to which USPS is a party or violate any Law applicable to USPS.

4. To the best of USPS's knowledge, there is no pending or threatened litigation which may affect the legality, validity or enforceability of this Contract or any of the transactions contemplated herein or USPS's ability to fully perform its obligations herein.

## **XI. Indemnification**

Customer will, at its expense, defend, indemnify, and hold Postal Service harmless from and against any and all claims, actions, demands, suits, losses, liabilities, judgments, expenses and costs (including reasonable attorneys' fees and fees of other professionals) ("Claims") (a) resulting from a claim or (b) arising out of or relating to any personal injury (including death) or loss or damage to tangible property (other than data or information) to the extent such injury or damage is the result of negligence or wrongful misconduct of Customer or its employees. Postal

Service will use First-Class Mail to notify Customer in writing of any Claim for which Postal Service believes it is entitled to indemnification under this Section XI; however, Customer will be relieved of its indemnification obligations under this Section XI only if and to the extent that the failure to receive notice materially prejudices Customer's ability to defend the Claim. Postal Service may, at its option and expense, retain its own counsel to participate in any proceeding related to a Claim.

No indemnified Party shall effect any settlement of, or make any admission of liability in connection with, any pending or threatened claim or proceeding as to which indemnification is sought under this Section XI without the written consent of the indemnifying Party, which written consent shall not be unreasonably withheld. Nothing herein shall affect the authority of the Attorney General or the U.S. Department of Justice.

## **XII. Remedies**

USPS and Customer acknowledge and agree that the other would not have an adequate remedy at law and would be irreparably harmed in the event that the provisions of Articles I, V and XI hereof were not performed in accordance with their terms or were otherwise breached. Accordingly, it is agreed that in the event of any breach or threatened breach of these provisions, USPS and Customer, in addition to any other remedies at law or in equity that each may have, shall be entitled, without the requirement of posting a bond or other security, to seek equitable relief, including but not limited to injunctive relief. In addition, notwithstanding the provisions of Section IV above, if a Party materially breaches this Agreement, and (a) such breach is incapable of cure, or (b) with respect to such breaches capable of cure, such breaching party does not cure such breach within twenty (20) calendar days after receiving written notice of material breach, this Agreement shall be terminated effective immediately without further notice. Termination of this Agreement will be without prejudice to any other rights and remedies that the non-breaching party may have under this Agreement or at law or in equity.

## **XIII. Sovereign Acts**

The Postal Service and Customer acknowledge and agree that the Contract is subject to any legislation that might be enacted by the Congress of the United States or any orders or regulations that might be promulgated by any agency, branch, or independent establishment of the United States Government. Notwithstanding anything to the contrary set forth herein, the Postal Service and Customer further acknowledge and agree that the Contract in no way waives the Postal Service's authority to act in its sovereign capacity and to promulgate and amend from time to time regulations and policies and that, pursuant to the sovereign acts doctrine, the Postal Service shall not be held liable for any acts performed in its sovereign capacity, or for any acts performed by any branch, agency or independent establishment of the United States in their sovereign capacities that may directly or indirectly affect the terms of the Contract. In the event that either Party is required by legislation enacted by the Congress of the United States or any orders or regulations that might be promulgated by any branch, agency, regulatory body, or independent establishment of the United States Government to terminate, or otherwise as a result of such action is unable to perform its obligations under the Contract, either Party may give the other Party a notice of termination of the Contract, which termination shall be effective



immediately or on the effective date of such requirement, whichever is later. The Parties agree that in the event that the Contract is terminated as set forth in the preceding two sentences, or in the event that either Party is enjoined from proceeding with the Contract by any court of competent jurisdiction, such Party shall not be subject to any liability by reason of such termination or injunction. To the extent that any applicable law, regulation or policy adopted after the Effective Date expressly supersedes the terms of the Contract, such law, regulation or policy shall control.

#### **XIV. Bankruptcy**

In the event that Customer enters into proceedings relating to bankruptcy, whether voluntary or involuntary, it will furnish written notification of the bankruptcy to the Postal Service signatory hereof. The notification must be furnished within five (5) calendar days of the initiation of the bankruptcy proceedings. The notification must include the date on which the petition was filed. It is the intent of the Parties and the Parties hereby agree that in the event of any proceeding by or against Customer under any law relating to bankruptcy, insolvency, reorganization or relief of any debtors, all rights, licenses, covenants, privileges, releases and immunities granted under or pursuant to this Contract will continue without termination, rejection or avoidance by virtue of or in the context of such proceeding. The Parties further agree that in the event that any proceeding is instituted by or against Customer under any law relating to bankruptcy, insolvency, reorganization or relief of any debtors, the provisions of Section 365(n) of U.S.C. § 101 (et seq.) ("U.S. Bankruptcy Code") will apply, and that Postal Service will retain and may fully exercise all of its respective rights and elections under the U.S. Bankruptcy Code. Upon written notice from Postal Service to Customer or the bankruptcy trustee of Customer of Postal Service's election to proceed under Section 365(n) of the U.S. Bankruptcy Code, Customer and such bankruptcy trustee will comply in all respects with Section 365(n) of the U.S. Bankruptcy Code, including by not interfering with the rights of Postal Service, any of its affiliates or any successors or assigns of Postal Service as provided by this Contract.

#### **XV. Public Communications**

The form, substance, and timing of any press release or other public disclosure of matters related to this Contract shall be mutually agreed to by Customer and the Postal Service in writing. Reasonable efforts will be made by the Parties to reach a prompt and satisfactory agreement for such communications. When Customer or the Postal Service are required by law to publically disclose matters related to this Contract, the non-disclosing Party shall be consulted and the Parties shall use their reasonable efforts to cause a mutually agreeable disclosure to be issued. The Postal Service specifically acknowledges and agrees that any use of the Customer's Marks pursuant to this Contract shall not create for the Postal Service any right, title or interest in the Customer's Marks. The Postal Service's use of Customer's Marks, if so approved by Customer, shall display only the official name, logos, colors, trademarks, service marks, or other identifying features of Customer's Marks.

#### **XVI. Notices**

Except as otherwise provided, all notices that are permitted or required under this Contract shall be in writing, in English, and shall be deemed given when delivered by U.S. Certified Mail, return receipt requested, postage paid, addressed to the Party to be served notice, or to such other person or address as may be designated by notice to the other Party, at the following addresses. All such notices and communications shall be effective upon receipt.

If to USPS:

United States Postal Service  
Vice President, Sales  
United States Postal Service  
475 L'Enfant Plaza S.W., Room 10229  
Washington, DC 20260-5127

If to Customer:



Managing Counsel,  
Pricing and Product Development Law  
United States Postal Service  
475 L'Enfant Plaza, S.W.  
Washington, DC 20260-1135

#### **XVII. Choice of Law; Consent to Jurisdiction**

With respect to any suit, action or other proceedings relating to the Contract that are not subject to the Dispute Resolution Mechanism set forth above (collectively "Proceedings"), USPS and Customer each irrevocably (a) submit to the exclusive personal jurisdiction of the United States District Court for the District of Columbia and (b) waive any objection that it may have at any time to the laying of venue of any Proceedings brought in such court, waive any claim that such Proceedings have been brought in an inconvenient forum and further waive the right to object, with respect to such Proceedings, that such court does not have personal jurisdiction over such Party.

#### **XVIII. Force Majeure**

Neither Party will be liable for delays or failure to perform the Services if due to any cause or conditions beyond its reasonable control, including delays or failures due to acts of God, natural disasters, acts of civil or military authority, fire, flood, earthquake, strikes, wars, utility disruptions (shortage of power), disruption of the postal system, labor dispute, judicial or governmental action, act of God or any other substantially similar causes beyond the control of the Party, that Party shall be excused from such to the extent that it is prevented, hindered or delayed by such causes; provided that the Party whose performance or attempts to cure is delayed or prevented gives the other Party written notice thereof within five (5) business days of any such event or occurrence and exercises its best efforts to resume performance or cure as soon as possible.

#### **XIX. Invalidity**



In the event that any one or more of the provisions contained in this Contract or in any other instrument referred to herein, is, for any reason, held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Contract or any other such instrument and the invalid, illegal or unenforceable provision shall be deemed modified so as to be valid, legal and enforceable to the maximum extent allowed under applicable law. The Parties agree that the arbitrator, arbitration panel or court of competent jurisdiction making such determination will have the power to modify the provision in a manner consistent with its objectives such that it is enforceable.

## **XX. Construction**

The headings of the Sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Contract. All Section and Exhibit references in this Contract are to Sections and Exhibits, respectively, of or to this Contract unless specified otherwise. Unless expressly stated otherwise, when used in this Contract the word "including" means "including but not limited to". The Parties have participated jointly in the negotiation and drafting of this Contract. If an ambiguity or question of intent or interpretation arises, this Contract shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof will arise or disfavor any Party by virtue of the authorship of any provisions of this Contract.

## **XXI. Third Party Beneficiaries**

This Contract will be binding upon the Parties hereto and their respective permitted assigns and successors in interest and will inure solely to the benefit of such Parties and their respective permitted assigns and successors in interest, and no other Person.

## **XXII. Relationship**

Nothing in this Contract shall be deemed or construed as creating a joint venture or partnership between the Parties. Neither Party is by virtue of this Contract authorized as an agent, employee, or legal representative of the other Party, and the relationship of the Parties is, and at all times will continue to be, that of independent contractors.

## **XXIII. Counterparts**

This Contract may be executed in one or more counterparts, each of which will be deemed to be an original but all of which will constitute one and the same agreement.

## **XXIV. Trademarks**

Neither Party may use the other Party's or its affiliates' name, logo, trademarks, service marks or trade names without the other Party's prior written consent.

## **XXV. Non-Solicitation**

During the term of the Contract and for one (1) year after its expiration or termination, neither Party may actively solicit the employment of any employee of the other Party, which employee was engaged in the performance of Services. Notwithstanding the foregoing, neither Party may be precluded from conducting general recruiting activities, such as participating in job fairs or publishing advertisements for general circulation.

#### **XXVI. Intellectual Property Rights**

Each Party acknowledges that the Contract does not grant any right or title of ownership in their respective intellectual property rights to the other unless specifically provided in the Contract.

#### **XXVII. Headings**

The Section and Article headings are provided for the convenience of the parties only and shall not be construed to limit or vary the terms of the Contract in any way.

#### **XXVIII. Survival**

The definitions of this Contract and the respective rights and obligations of the parties relating to confidentiality, non-disclosure, limitation of liability, indemnification, governing law, payment and contractual construction shall survive any termination or expiration of this Contract.

#### **XXIX. Execution**

This Contract may be executed by facsimile signatures and such signature will be deemed binding for all purposes of this Contract, without delivery of an original signature being thereafter required.

#### **XXX. No Publicity**

Except as provided in Sections VI.D, VI.E and XV above and as may be required pursuant to Sections XI, XII, XIII and XVII above, Postal Service agrees not to disclose the identity of Customer or its affiliates or any of their directors, officers, managers, employees, consultants or agents as a customer or prospective customer of Postal Service or the existence or nature of this Agreement. Without limiting the generality of the foregoing, Postal Service will not use, in advertising, publicity or otherwise, the name of Customer or its affiliates or any of their directors, officers, managers, employees, consultants or agents or any trade name, trademark, service mark, logo or symbol of Customer or its affiliates.

IN WITNESS WHEREOF, the Parties hereto have caused this contract to be duly executed as of the later date below:

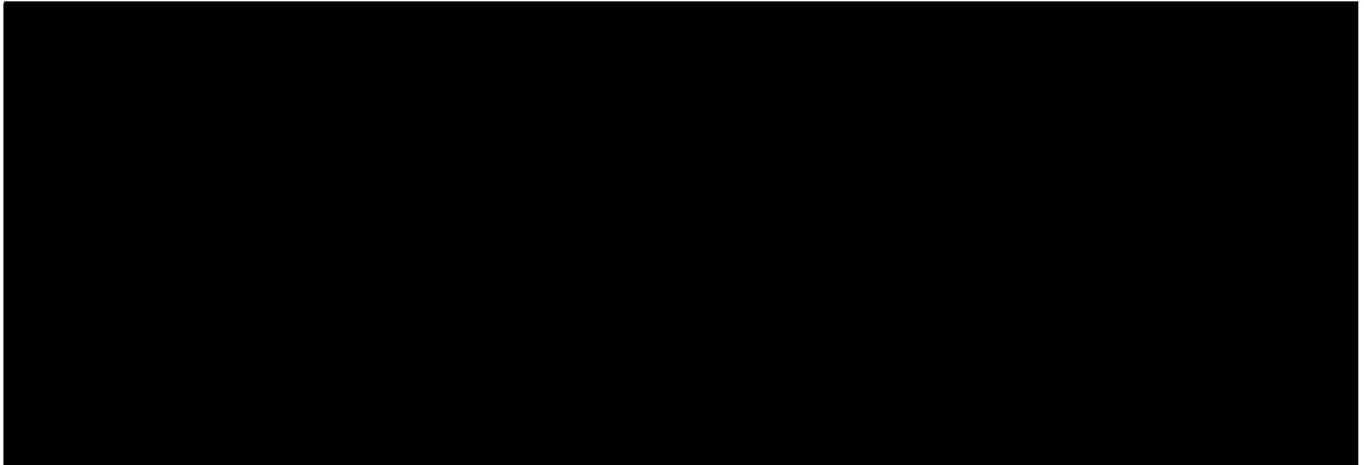
**UNITED STATES POSTAL SERVICE**

Signed by: 

Printed Name: for Cliff Rucker

Title: Sr VP Sales and Customer Relations

Date: 9/5/17



## Attachment A

### Daily PM Same Day Routes<sup>1</sup>



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<sup>1</sup>

[Redacted footnote text]



**MAIL CLASSIFICATION SCHEDULE**

**PART B—COMPETITIVE PRODUCTS**

**2000 COMPETITIVE PRODUCT LIST**

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**NEGOTIATED SERVICE AGREEMENTS**

Domestic

\*\*\*

Priority Mail Contract 368

### **Statement of Supporting Justification**

I, Dennis R. Nicoski, Manager, Field Sales Strategy and Contracts, am sponsoring this request that the Commission add Priority Mail Contract 368 to the list of competitive products. This statement supports the Postal Service's request by providing the information required by each applicable subsection of 39 C.F.R. § 3020.32. I attest to the accuracy of the information contained herein.

- (a) *Demonstrate why the change is in accordance with the policies and applicable criteria of the Act.*

As demonstrated below, the change complies with the applicable statutory provisions.

- (b) *Explain why, as to the market dominant products, the change is not inconsistent with each requirement of 39 U.S.C. § 3622(d), and that it advances the objectives of 39 U.S. C. § 3622(b), taking into account the factors of 39 U.S. C. § 3622(c).*

Not applicable. The Postal Service is proposing that this Priority Mail contract be added to the competitive products list.

- (c) *Explain why, as to competitive products, the addition, deletion, or transfer will not result in the violation of any of the standards of 39 U.S.C. 3633.*

The service to be provided under the contract will cover its attributable costs and make a positive contribution to coverage of institutional costs. The contract will increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. Accordingly, no issue of subsidization of competitive products by market dominant products arises (39 U.S.C. § 3633(a)(1)).

- (d) *Verify that the change does not classify as competitive a product over which the Postal Service exercises sufficient market power that it can without risk of losing a significant level of business to other firms offering similar products: (1) set the price of such product substantially above costs, (2) raise prices significantly; (3) decrease quality; or (4) decrease output.*

The contract sets specific terms and conditions for providing Priority Mail to the customer. Priority Mail service is provided in a highly competitive market, and the market for same-day delivery is emerging rapidly, with several companies already established in the market, and others looking to enter the market in the near future. The Postal Service is unable to set prices substantially above costs, raise prices significantly, decrease quality, or decrease output, without losing this business to private competitors in the expedited shipping market.

In negotiating this contract, the Postal Service's bargaining position was constrained by the existence of other providers of services similar to the Postal Service's. As such, the market precludes the Postal Service from taking unilateral action to increase prices or decrease service. As with Priority Mail in general, the Postal Service may not decrease quality or output without risking the loss of business to competitors that offer similar expedited delivery services. The market does not allow the Postal Service to raise prices or offer prices substantially above costs; rather, the contract is premised on prices and terms that provide sufficient incentive for the customer to ship with the Postal Service rather than a competitor.

- (e) *Explain whether or not each product that is the subject of the request is covered by the postal monopoly as reserved to the Postal Service under 189 U.S.C. 1696, subject to the exceptions set forth in 39 U.S.C. 601.*

I am advised that merchandise sent by Priority Mail and this contract are not covered by these provisions. See part (d) above.

- (f) *Provide a description of the availability and nature of enterprises in the private sector engaged in the delivery of the product.*

See part (d) above. Expedited shipping, similar to Priority Mail, is widely available from well-known and successful private firms at both published and contract prices. The market for same-day delivery is emerging rapidly, with several companies already established in the market, and others looking to enter the market in the near future. Currently, there are several companies offering some type of same-day delivery service within the eligible ZIP Codes for this contract. Those companies include a mix of large firms and small businesses.

- (g) *Provide any available information of the views of those who use the product on the appropriateness of the proposed modification.*

Having entered into this contract with the Postal Service, the customer supports the addition of the contract to the product list so that the contractual terms can be effectuated.

- (h) *Provide a description of the likely impact of the proposed modification on small business concerns.*

A mix of couriers and express delivery service companies compete within the emerging market for same-day delivery, and the Postal Service expects them to continue doing so. Other larger companies that have entered the same-day delivery market have chosen to utilize couriers or smaller delivery companies for same-day delivery. Additionally, the Postal Service has examined the market and found that many couriers and smaller delivery companies specialize – and will continue to specialize – in the delivery of time-sensitive business, legal, and financial documents, a variety of time-sensitive medical items, and perishable goods. The Postal Service's same-day delivery

offerings should not have a significant impact on the time-sensitive deliveries provided by couriers and similar small business delivery companies.

- (i) *Include such other information, data, and such statements of reasons and bases, as are necessary and appropriate to fully inform the Commission of the nature, scope, significance, and impact of the proposed modification.*

Additional details regarding the terms of the contract have been provided to the Commission under seal due to the sensitivity of the contract to both the customer and the Postal Service.

## **Certification of Prices for Priority Mail Contract 368**

I, Steven R. Phelps, Manager, Regulatory Reporting and Cost Analysis, Finance Department, am familiar with the prices and terms for Priority Mail Contract 368. The prices and terms contained in this Contract were established by the Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Domestic Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates (Governors' Decision No. 11-6).

I hereby certify, based on the financial analysis provided herewith, that the prices are in compliance with 39 U.S.C § 3633 (a)(1), (2), and (3). They are expected to cover attributable costs. There should therefore be no subsidization of competitive products by market dominant products. This contract should not impair the ability of competitive products on the whole to cover an appropriate share of institutional costs.

**Steven Phelps**

Digitally signed by Steven Phelps  
DN: cn=Steven Phelps, o, ou,  
email=steven.r.phelps@usps.gov,  
c=US  
Date: 2017.10.04 16:09:32 -04'00'

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Steven R. Phelps

**APPLICATION OF THE UNITED STATES POSTAL SERVICE  
FOR NON-PUBLIC TREATMENT OF MATERIALS**

In accordance with 39 C.F.R. § 3007.21, the Postal Service hereby applies for non-public treatment of: the unredacted Governors' Decision; the unredacted shipping services contract; and the supporting documents establishing compliance with 39 U.S.C. § 3633 and 39 C.F.R. § 3015.5. The Postal Service hereby furnishes the justification required for this application by each subsection of 39 C.F.R. § 3007.21(c), as enumerated below.

For the reasons discussed, the Postal Service asks that the Commission grant its application for non-public treatment of the identified materials. The Postal Service further requests that the Commission order that the duration of such treatment of customer identifying information be extended indefinitely.

**(1) The rationale for claiming that the materials are non-public, including the specific statutory basis for the claim, and a statement justifying application of the provision(s);**

The materials designated as non-public consist of information of a commercial nature, which under good business practice would not be publicly disclosed. In the Postal Service's opinion, this information would be exempt from mandatory disclosure pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3), (b)(4).<sup>10</sup> Because the portions of the materials which the Postal Service is applying to file only under seal fall within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support its determination that these materials are exempt from public disclosure and grant its application for their non-public treatment.

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<sup>10</sup> In appropriate circumstances, the Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A). The Commission has indicated that "likely commercial injury" should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.

Information of a commercial nature, which under good business practice would not be publicly disclosed, as well as third party business information, are not required to be disclosed to the public. 39 U.S.C. § 410(c)(2); 5 U.S.C. § 552(b)(4). The Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A).<sup>11</sup> Because the portions of materials filed non-publicly in this docket fall within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support its determination that these materials are exempt from public disclosure and grant its application for their non-public treatment.

**(2) Identification, including name, phone number, and email address for any third-party who is known to have a proprietary interest in the materials, or if such an identification is sensitive, contact information for a Postal Service employee who shall provide notice to that third party;**

The Postal Service believes that the customer with whom the contract is made has a proprietary interest in the non-public materials and that customer-identifying information should be withheld from public disclosure. Therefore, rather than identifying the customer, the Postal Service gives notice that it has already informed the customer, in compliance with 39 C.F.R. § 3007.20(b), of the nature and scope of this filing and its ability to address its confidentiality concerns directly with the Commission. The Postal Service employee responsible for providing notice to the third party with proprietary interest in the materials filed in this docket is Elizabeth A. Reed, Attorney, 475 L'Enfant Plaza SW, Washington, D.C. 20260-1137, whose email address is [elizabeth.a.reed@usps.gov](mailto:elizabeth.a.reed@usps.gov) and whose telephone number is 202-268-3179.

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<sup>11</sup> The Commission has indicated that "likely commercial injury" should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.



**(3) A description of the materials claimed to be non-public in a manner that, without revealing the materials at issue, would allow a person to thoroughly evaluate the basis for the claim that they are non-public;**

The Governors' Decision establishing Domestic Competitive contracts, including those for Priority Mail, the contract identifying the customer and containing the prices, terms, and conditions of the contract, and the financial workpapers supporting the contract are being filed under seal in this docket. Redacted copies of the Governors' Decision and the contract are being filed publicly in this docket. The Postal Service maintains that the redacted portions of the Governors' Decision, the contract, name of the customer and related financial information should remain confidential.

With regard to the contract, the redactions are of the name, address, signature block, and other information that could identify the customer; such identifying information of a postal patron may be withheld from mandatory public disclosure by virtue of 39 U.S.C. § 504(g)(1) and 39 U.S.C. § 410(c). Also redacted are the negotiated price structure and the terms directly related to implementation of the price structure.

The redacted portions of the Governors' Decision and attached Analysis protect the costs authorizing Domestic Competitive contracts, and the analysis of those costs.

The redactions applied to the financial work papers protect commercially sensitive information such as underlying costs and assumptions, pricing formulas, information relevant to the mailing profile of the customer, and cost coverage projections. To the extent practicable, the Postal Service has limited its redactions in the workpapers to the actual information it determined to be exempt from disclosure under 5 U.S.C. § 552(b). However, in a limited number of cases, narrative passages or notes were redacted in their entirety due to the practical difficulties of redacting particular words or numbers within the text as presented in a spreadsheet format.

**(4) Particular identification of the nature and extent of commercial harm alleged and the likelihood of such harm;**

If the redacted information were to be disclosed publicly, the Postal Service considers that it is quite likely that it and the customer would suffer commercial harm.

The information is commercially sensitive, and the Postal Service does not believe that it would be disclosed under good business practices.

Revealing this information would provide a competitive advantage to competitors of the Postal Service and of the customer. The Postal Service considers that it is highly probable that if this information were made public, such entities would take immediate advantage of it and there is a substantial risk that the Postal Service and the customer would lose business as a result. Additionally, other postal customers could use the information to their advantage in negotiating the terms of their own agreements with the Postal Service and other businesses could use the information to their advantage in negotiating with the customer. The Postal Service considers these to be highly probable outcomes that would result from public disclosure of the redacted material.

Finally, the financial work papers include specific information such as costs, negotiated prices and pricing structure, assumptions used in developing costs and prices, mailer profile information, and projections of variables. All of this information is highly confidential in the business world. If this information were made public, the Postal Service's and the customer's competitors would likely take great advantage of this information. Unlike its competitors, the Postal Service is required to meet the standards of 39 U.S.C. § 3633 with each negotiated service agreement that it asks to have added to the competitive products list. Competitors are not so constrained and could use the redacted information to their advantage in gaining customers. The formulas shown in the spreadsheets in their native format provide additional sensitive information. Revealing the Postal Service's profit margin information could also be used by the customer to attempt to renegotiate its own prices.

**(5) At least one specific hypothetical, illustrative example of each alleged harm;**

Identified harm: Revealing customer identifying information would enable competitors to target the customers for sales and marketing purposes.

Hypothetical: The identity of the customer in this contract is revealed to the public. A competitor's sales representatives contact the Postal Service's customer and

offer the customer lower prices or other incentives, taking away the business anticipated by the Postal Service.

Identified harm: Public disclosure of negotiated terms of the agreement could be used by competitors and potential customers to the detriment of the Postal Service and its customer.

Hypothetical: A competitor obtains a copy of the unredacted version of Customer A's contract and workpapers to the detriment of the Postal Service's customer. Company B discovers proprietary business strategies and changes its business practices to minimize differentiation, identify their key customer base and cause defection of Customer A's customers. Customer A cancels the contract and withdraws their business from the Postal Service. Other companies would then refuse to share critical details of their business or to participate in negotiated prices with the Postal Service, harming the Postal Service's ability to compete in the marketplace for additional volume and revenue.

Hypothetical: The competitor could leverage multiple services to offer deeper discounts than provided by the Postal Service's contract as a loss leader, using profits on other products profits to make up for the temporary loss.

Identified harm: Public disclosure of the price formula, underlying cost structure, and information in the financial work papers relating to the contract would be used by competitors and customers to the detriment of the Postal Service.

Hypothetical: A competing package delivery service or its representative obtains a copy of the unredacted version of the financial work papers. It analyzes the work papers to determine what the Postal Service would have to charge its customers in order to meet its minimum statutory obligations for cost coverage and contribution to institutional costs. It then sets its own rates for products similar to what the Postal Service offers its customers under that threshold and markets its ability to guarantee to beat the Postal Service on price for similar delivery services.

Hypothetical: Competitors constantly monitor "cost to serve" scenarios to combine and alter facilities to lower costs. A competitor could add satellite pickup stations closer to the Postal Service's customer in order to underbid the Postal Service's prices.

Identified harm: Public disclosure of the prices and related terms would provide potential customers extraordinary negotiating power.

Hypothetical: Customer B obtains the contract showing Customer A's negotiated prices and the underlying workpapers. Customer B can determine that there is additional profit margin between the prices provided to Customer A and the statutory cost coverage that the Postal Service must produce in order for the agreement to be added to the competitive products list. Although Customer B was offered prices identical to Customer A's, Customer B uses the publicly available information to insist that it unless the Postal Service offers it even lower prices than Customer A's, it will not use the Postal Service but will give its business to a competitor of the Postal Service.

Alternatively, Customer B attempts to negotiate lower rates only for those destinations for which it believes the Postal Service is the low-cost provider among all service providers. The Postal Service may agree to this demand in order to keep the customer's business overall, which it believes will still satisfy total cost coverage for the agreement. Then, Customer B uses other providers for destinations other than those for which it negotiated lower rates. This impacts the Postal Service's overall projected cost coverage for the agreement. Although the Postal Service can terminate the contract when it sees that the mailer's practice and projected profile are at variance, the costs associated with establishing the contract, including filing it with the Postal Regulatory Commission, would be sunk costs that would have a negative impact on postal finances.

Harm: Public disclosure of information in the financial work papers would be used by the customer's competitors to its detriment.

Hypothetical: A business in competition with the customer obtains a copy of the unredacted version of the financial work papers. The customer's competitor analyzes the work papers to assess the customer's underlying shipping costs. The customer's competitor uses that information as a baseline to negotiate with shipping companies and other suppliers to develop lower-cost alternatives and thereby to undercut the customer.

**(6) The extent of protection from public disclosure deemed to be necessary;**

The Postal Service maintains that the redacted portions of the materials filed non-publicly should be withheld from persons involved in competitive decision-making in the market for domestic parcel shipping products, as well as their consultants and attorneys. Additionally, the Postal Service believes that actual or potential customers of the Postal Service for such products should not be provided access to the non-public materials.

**(7) The length of time deemed necessary for the non-public materials to be protected from public disclosure with justification thereof; and**

The Commission's regulations provide that non-public materials shall lose non-public status ten years after the date of filing with the Commission, unless the Commission or its authorized representative enters an order extending the duration of that status. 39 C.F.R. § 3007.30. The Postal Service believes that the ten-year period of non-public treatment is sufficient to protect its interests with regard to the information it determined should be withheld due to commercial sensitivity, other than customer identifying information. The Postal Service believes that customer-identifying information should be protected permanently and asks the Commission to extend the duration of non-public status of that information indefinitely. Disclosure of customer identifying information leaves the Postal Service vulnerable to competitive "cherry-picking." Customers may seek to extend or renew their contracts, but the implementation of a new 10-year period of non-public treatment with each renewed contract does not affect the expiration of non-public treatment of the same information under the original contract. Therefore, the Postal Service seeks indefinite non-public treatment of the customer's name, address and other identifying information in the non-public materials.

**(8) Any other factors or reasons relevant to support the application.**

None.